

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES E. BROWN,
Plaintiff

vs.

COUNTY OF SCHUYLKILL,
SCHUYLKILL COUNTY PRISON
BOARD MEMBERS
SCHUYLKILL COUNTY PRISON
GERALD BRITTON,
FORREST L. SHADLE,
JEROME P. KNOWLES,
STANLEY TOBASH,
EUGENE BERDANIER,
ANTHONY KANKOWSKI,
DAVID J. KURTZ,
and WILLIAM BALDWIN
Defendants

(Civil Action No. 1:CV-00-1224

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FILED
HARRISBURG

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MARY E. D'ANDREA, CLERK
Per.
DEPUTY CLERK

MOTION TO REQUEST A DELAY OF
DEFENDANTS MOTION TO DISMISS THE COMPLAINT OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGEMENT

Plaintiff, CHARLES E. BROWN, moves to request a delay pursuant to Fed. R. Civ. P. Rule 56(f), of defendant's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6), motion for a more definite statement pursuant to Fed. R. Civ. P. Rule 12(e) or, in the alternative, for summary judgement and supporting memorandum of law, with plaintiffs memorandum of law in support.

1. Plaintiff is requesting a delay of defendant's motion due to his inability, at this present time, to produce and submit necessary

affidavits and/or other evidence to oppose defendant's motion to dismiss and for summary judgement (Fed. R. Civ. P. 56(f))

2. A Court should not grant a summary judgement against a party who has not had an opportunity to pursue discovery or whose discovery requests have not been answered. In the instant case, an opportunity for discovery has not been afforded and would be governed under, *Sala-huddin v. Coughlin*, 993 F.2d 306, 309-10 (2nd Cir. 1993); *Villante v. Dept. of Corrections of City of New York*, 786 F.2d 516, 521-23 (2nd Cir. 1986).

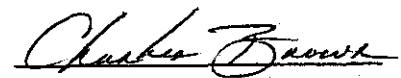
3. Where the facts are in the possession of the moving party, a continuance of a motion for summary judgement should be granted as a matter of course. (*Costlow v. United States*, 552 F.2d 560, 564 (3rd Cir. 1977); accord, *Baker v. McNeil Island Corrections center*, 859 F.2d 124, 127 (9th Cir. 1988).

4. Such a request is also appropriate since there are other reasons why plaintiff cannot obtain necessary evidence, ie; the need of affidavits of other prisoners who are now at other prisons, and the existance of additional essential and discoverable information obtainable through discovery. (*Terrell v. Brewer*, 935 F.2d 1015, 1018 (9th Cir. 1991)

In closing, an order that prison officials permit plaintiff to correspond for the limited purpose of requesting affidavits is appropriately in uniformity with plaintiffs order for delay.

Dated: March 26, 2001

Cordially,


Charles E. Brown,
Plaintiff

